

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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WILLIAM J. WILKINS,

Plaintiff,

v.

DOUGLAS COUNTY SHERIFF'S OFFICE,
et al.,

Defendants.

Case No. 3:11-cv-00830-MMD-VPC

ORDER

(Motion to Vacate – dkt. no. 17)
(Motion for Reconsideration – dkt. no. 18)

I. SUMMARY

Before the Court are Plaintiff's Motion to Vacate the District Court's Order Regarding the Magistrate's Report and Recommendation (dkt. no. 17) and Motion for Reconsideration (dkt. no. 18). Both Motions request the same relief: that the Court vacate its July 12, 2012, Order Regarding the Magistrate's Report and Recommendation (dkt. no. 15) and review Plaintiff's already-filed first amended complaint (dkt. no. 11). Therefore, the two Motions are treated as a single Motion for the purposes of this Order. For the reasons discussed below, the Motions are denied.

II. BACKGROUND

Plaintiff, a pro se litigant, filed a 42 U.S.C. § 1983 complaint alleging that Defendants failed to properly treat his medical conditions while he was imprisoned at the Northern Nevada Correctional Center. (Dkt. no. 1-1.) On July 12, 2012, this Court

1 issued an Order Adopting the Magistrate's Report and Recommendation ("R & R") in
2 part and directing Plaintiff to file a first amended complaint. (Dkt. no. 15.) Plaintiff
3 argues that he had addressed the defects discussed in the R & R in an already-filed First
4 Amended Complaint (dkt. no. 11). However, as this Court noted on page 5 of its Order
5 Regarding the Magistrate's R & R, the first amended complaint was improperly filed and
6 was not considered by the Court. Plaintiff was instructed to file a first amended
7 complaint as set forth in the Order. (Dkt. no. 15 at 5.)

8 **III. DISCUSSION**

9 **A. Legal Standard**

10 Although not mentioned in the Federal Rules of Civil Procedure, motions for
11 reconsideration may be brought under 60(b).¹ Under Rule 60(b), a court may relieve a
12 party from a final judgment, order or proceeding only in the following circumstances: (1)
13 mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence;
14 (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other
15 reason justifying relief from the judgment. *Stewart v. Dupnik*, 243 F.3d 549, 549 (9th Cir.
16 2000); *see also De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir.
17 2000) (noting that the district court's denial of a Rule 60(b) motion is reviewed for an
18 abuse of discretion).

19 A motion for reconsideration must set forth the following: (1) some valid reason
20 why the court should revisit its prior order; and (2) facts or law of a "strongly convincing
21 nature" in support of reversing the prior decision. *Frasure v. United States*, 256 F. Supp.
22 2d 1180, 1183 (D. Nev. 2003). On the other hand, a motion for reconsideration is
23 properly denied when the movant fails to establish any reason justifying relief. *Backlund*
24 *v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985) (holding that a district court properly
25 denied a motion for reconsideration in which the plaintiff presented no arguments that
26

27 ¹ Motions for reconsideration may also be brought under Rules 59(e). However,
28 Plaintiff files his Motion under Rule 60(b). (Dkt. no. 18 at 1.)

1 were not already raised in his original motion). Motions for reconsideration are not “the
2 proper vehicles for rehashing old arguments,” *Resolution Trust Corp. v. Holmes*, 846 F.
3 Supp. 1310, 1316 (S.D. Tex. 1994) (footnotes omitted), and are not “intended to give an
4 unhappy litigant one additional chance to sway the judge.” *Durkin v. Taylor*, 444 F.
5 Supp. 879, 889 (E.D. Va. 1977).

6 **B. ANALYSIS**


7 Plaintiff does not argue any newly discovered evidence exists or that there has
8 been any change in the applicable law. Further, the Court’s decision was not manifestly
9 unjust. The Court allowed Plaintiff to re-allege all of his plausible causes of action in an
10 amended complaint. Plaintiff is instructed to file a first amended complaint in
11 accordance with the terms of this Court’s previous Order discussing his complaint. (dkt.
12 no. 15).

13 **IV. CONCLUSION**

14 IT IS THEREFORE ORDERED that Plaintiff’s Motion to Vacate (dkt. no. 17) is
15 DENIED.

16 IT IS FURTHER ORDERED that Plaintiff’s Motion for Reconsideration (dkt. no.
17 18) is DENIED.

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19 DATED THIS 23rd day of August 2012.

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UNITED STATES DISTRICT JUDGE